

**REMARKS**

This is in full and timely response to the Office Action mailed on December 23, 2008.

Claims 1-15 are currently pending in this application.

*No new matter has been added.*

Reexamination in light of the following remarks is respectfully requested

Paragraph 2 indicates a rejection of claims 1-6, and 12-15 under 35 U.S.C. §103 as allegedly being unpatentable *U.S. Patent Application Publication No. 2004/0027942 (Sako'942)* in view of U.S. Patent No. 5,541,902 (Ten Kate).

Paragraph 3 indicates a rejection of claims 7-9 under 35 U.S.C. §103 as allegedly being unpatentable *U.S. Patent Application Publication No. 2004/0027942 (Sako'942)* in view of U.S. Patent No. 5,541,902 (Ten Kate) and in further view of U.S. Patent No. 6,937,549 (Nozaki).

Paragraph 4 indicates a rejection of claim 10 under 35 U.S.C. §103 as allegedly being unpatentable *U.S. Patent Application Publication No. 2004/0027942 (Sako'942)* in view of U.S. Patent No. 5,541,902 (Ten Kate) and in further view of U.S. Patent Application Publication No. 2003/0161233 (Sako'233).

Paragraph 5 indicates a rejection of claim 11 under 35 U.S.C. §103 as allegedly being unpatentable *U.S. Patent Application Publication No. 2004/0027942 (Sako'942)* in view of U.S. Patent No. 5,541,902 (Ten Kate), in further view of U.S. Patent Application Publication No. 2003/0161233 (Sako'233), and in further view of U.S. Patent No. 5,995,704 (Shido).

If the allowance of the claims is not forthcoming at the very least and a new grounds of rejection made, then a *new non-final Office Action* is respectfully requested at least for the following reasons.

This rejection is traversed at least for the following reasons.

**Present application** - The above-identified application is entitled to benefit of the filing date for Japanese Patent Application No. 2003-101584 of **April 4, 2003**.

**Sako'942** - The rejection of claims 29-32 relies upon U.S. Patent Application Publication No. 2004/0246434 (Sako'942).

Sako'942 has a PCT filing date of **July 29, 2002**.

However, Sako'942 is in the national stage ( 35 U.S.C. 371 ) of an International Application filed on or after November 29, 2000 and which was *not published in English* under PCT Article 21(2).

According to 35 U.S.C. 102 (e), *no benefit of the international filing date* (nor any U.S. filing dates prior to the IA) is given for 35 U.S.C. 102 (e) prior art purposes if the IA was published under PCT Article 21(2) in a language other than English, regardless of whether the international application entered the national stage. See M.P.E.P. §706.02(f)(1).

Sako'942 has a publication date of **February 12, 2004**.

Here, the filing date for Japanese Patent Application No. 2003-101584 of **April 4, 2003** in the present application is *earlier* than the publication date of **February 12, 2004** for Sako'942.

Thus, Sako'942 appears to be *unavailable as prior art* and that the rejection of the claims using this reference should be *withdrawn* as a result. MPEP § 201.15.

Moreover, the Final Office Action has concluded that Sako'942 does not teach:

- Reading back data while the recording of said data by said recording means is in progress (Final Office Action at page 2);
- Verification means for verifying the recording on said information recording medium based on said data stored by said storage means (Final Office Action at page 5);
- Setting means for setting at least one of an exhaustion limit value parameter and a frequency limit value parameter of collective readout for said readout of said data by said readout means in accordance with a communication speed (Final Office Action at page 6);
- Selection means to select at least one of an exhaustion limit value parameter and a frequency limit value parameter of collective readout for said readout of said data by said readout means (Final Office Action at pages 6-7).

Withdrawal of this rejection and allowance of the claims is respectfully requested.

**Official Notice**

There is no concession as to the veracity of Official Notice, if taken in any Office Action.

An affidavit or document should be provided in support of any Official Notice taken. 37 CFR 1.104(d)(2), MPEP § 2144.03. See also, *Ex parte Natale*, 11 USPQ2d 1222, 1227-1228 (Bd. Pat. App. & Int. 1989)(failure to provide any objective evidence to support the challenged use of Official Notice constitutes clear and reversible error).

### **Extensions of time**

Please treat any concurrent or future reply, requiring a petition for an extension of time under 37 C.F.R. §1.136, as incorporating a petition for extension of time for the appropriate length of time.

The Commissioner is hereby authorized to charge all required fees, fees under 37 C.F.R. §1.17, or all required extension of time fees.

### **Fees-general authorization**

The Commissioner is hereby authorized to charge any deficiency in fees filed, asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm).

If any fee is required or any overpayment made, the Commissioner is hereby authorized to charge the fee or credit the overpayment to Deposit Account # 18-0013.

### **Conclusion**

This response is believed to be a complete response to the Office Action.

Applicants reserve the right to set forth further arguments supporting the patentability of their claims, including the separate patentability of the dependent claims not explicitly addressed herein, in future papers.

For the foregoing reasons, all the claims now pending in the present application are allowable, and the present application is in condition for allowance.

Accordingly, favorable reexamination and reconsideration of the application in light of the remarks is courteously solicited.

If the Examiner has any comments or suggestions that could place this application in even better form, the Examiner is requested to telephone Brian K. Dutton, Reg. No. 47,255, at 202-955-8753.

Dated: March 23, 2009

Respectfully submitted,

By 

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